

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

Civil No. 21-11558

AMERICAN AIRLINES GROUP, INC. and
JETBLUE AIRWAYS CORPORATION,

Defendants.

**PLAINTIFF STATES' MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF SECOND CONSENT MOTION TO EXTEND TIME TO
MOVE FOR ATTORNEYS' FEES**

INTRODUCTION

Plaintiffs the District of Columbia, the states of Arizona, California, and Florida, and the Commonwealths of Massachusetts, Pennsylvania, and Virginia (collectively Plaintiff States), move this Court for an order extending the time for Plaintiff States to file a motion for attorneys' fees and costs, pursuant to Fed. R. Civ. P. 6(b)(1) and 54(d). Plaintiff States request this second extension to allow additional time for the parties to continue to confer and to attempt to reach agreement on attorneys' fees and costs issues. Pursuant to D. Mass. R. 7.1(a), the undersigned counsel discussed the motion with counsel for Defendants American Airlines Group Inc. (American) and JetBlue Airways Corporation (JetBlue) (collectively Defendants). American and JetBlue consent to the relief requested by the Plaintiff States.

ARGUMENT

On July 15, 2020, Defendants entered into the agreement known as the Northeast Alliance. On September 21, 2021, the Plaintiff States and the United States Department of Justice filed a complaint to enjoin the Northeast Alliance, pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 16 of the Clayton Act, 15 U.S.C. § 26. Section 16 of the Clayton Act provides that “any person . . . shall be entitled to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws,” including a violation of Section 1 of the Sherman Act. 15 U.S.C. § 1. Plaintiff States are “persons” under Section 16 of the Clayton Act. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-261 (1972).

On May 19, 2023, this Court issued an Order permanently enjoining Defendants from continuing, and further implementing, the agreement known as the Northeast Alliance. The Court issued its Final Judgment and Order Entering Permanent Injunction on July 28, 2023. Section 16 of the Clayton Act states that “[i]n any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorneys’ fee, to such plaintiff.” 15 U.S.C. § 26. Plaintiff States will seek their attorneys’ fees and costs as prevailing plaintiffs in this action.

Pursuant to Fed. R. Civ. P. 54(d)(2), a motion for claiming attorneys’ fees must be filed no later than 14 days after the entry of judgment. On June 1, 2023, Plaintiff States filed an initial motion to extend this deadline—to allow Plaintiff States and Defendants to meaningfully meet and confer on attorneys’ fees and costs issues—that the Court granted later that day. Since, Plaintiff States and Defendants have discussed potential resolution of these issues and continue to do so. A second extension of time would provide Plaintiff States and Defendants with additional time to continue these discussions and would provide the Court with an opportunity to implement an orderly briefing procedure if the parties are unable to find a resolution.

Additionally, should either American or JetBlue file an appeal in this matter, the proposed extension of time will help to avoid the filing of multiple fee petitions.

Accordingly, for good cause shown and with the consent of Defendants, Plaintiff States request that the Court grant an order under Fed. R. Civ. P. 54(d)(2) extending the time for Plaintiff States to file a motion for attorneys' fees and costs to October 17, 2023, or if either American Airlines Group Inc. or JetBlue Airways Corporation file a notice of appeal, to twenty-one (21) days following final resolution of the appeal.

Dated: August 18, 2023

Respectfully submitted,

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